



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AR97

Loan Guaranty: Servicer Regulation Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is renaming and clarifying certain loss-mitigation terms used in VA's regulations. VA is making these changes to align the names and definitions with their general use in the housing finance industry. VA believes that these revisions will help avoid confusion and enable servicers and veterans to address loan defaults more quickly and effectively.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Andrew Trewayne, Assistant Director for Loan and Property Management, and Stephanie Li, Assistant Director for Regulations, Legislation, Engagement, and Training, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

On July 20, 2023, VA published a proposed rule in the *Federal Register* (88 FR 46720) to rename and clarify certain loss-mitigation terms used in VA's regulations to better align such name and terms with their general use in the housing finance industry. The public comment period for the proposed rule closed on September 18, 2023. VA is adopting as final the proposed regulatory changes with the grammatical edit as noted below.

VA received one comment that did not address the subject of the rulemaking but instead requested VA ban realtors from transactions involving veterans or their survivors. VA finds this comment to be outside the scope of this rulemaking and, therefore, will make no changes to the regulatory text based on this comment.

In the proposed rule, VA discussed that the Agency would remove the references to “written” and “executed” in regard to a repayment plan and a special forbearance agreement and replace them with a requirement for the repayment plan or special forbearance agreement be documented 88 FR 46720, 46721. However, VA inadvertently kept the term “executed” in the proposed amendment to the definition of “special forbearance.” Therefore, VA is correcting the error in this final rule by replacing the current rule’s phrase, “a written agreement executed” with “a documented agreement,” as proposed, and removing the term “executed.” The corrected definition of special forbearance reads in this final rule, “a documented agreement by and between the holder and the borrower.” The deletion is grammatical only, not substantive, and reflects VA’s intent as explained in the proposal.

The purpose of this paragraph is to clarify the Agency’s intent with respect to the severability of the provisions of this final rule. Each provision that the Agency has amended is capable of operating independently, and the Agency intends them to be severable. If any provision of this rule is determined by judicial review or operation of law to be invalid, the Agency would not intend that partial invalidation to render the remainder of this rule invalid. Likewise, if the application of any portion of this final rule to a particular circumstance were determined to be invalid, the agencies would intend that the rule remain applicable to all other circumstances.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental,

public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). However, this rulemaking will have a direct impact on a number of industries that service VA loans. VA defines a servicer as a mortgage company that collects funds for a debt incurred by a borrower to purchase a home. When a loan becomes delinquent after a borrower misses one or more mortgage payments, servicers are responsible for servicing delinquent loans and working with the borrower to reach an agreement that will bring the loan current or avoid foreclosure whenever feasible.

A recent analysis indicated there are currently 450 servicers in varying industries that will be impacted by this rulemaking. This final rule will impose a one-time rule familiarization cost to servicers in 2024, estimated at \$55.91 per servicer regardless of size. The \$55.91 cost is derived by dividing the cost of rule familiarization, which is estimated to be \$25,157, by the 450 servicers VA currently works with. To estimate the one-time rule familiarization cost, VA multiplies the number of servicers by the time needed for in-house or retained legal counsel to

review and ensure compliance with the rule and their compensation rate. VA assumes that it would take 30 minutes for a lawyer to review the rulemaking. The compensation rate of the lawyers is estimated by multiplying their hourly wage rate (\$78.74) by the fringe benefits factor, 1.42. Multiplying the number of servicers (450) by the time to review the rule (30 minutes) and their total compensation rate (\$111.81 per hour) results in a one-time total cost of \$25,157 in Fiscal Year (FY) 2024. This one-time cost in FY 2024 is offset by the long-term cost savings of this rulemaking from reduced agreement preparation and sharing efforts.

VA considers a rulemaking to have a “significant economic impact” when the impact associated with the rulemaking for a small entity equals or exceeds 1 percent of annual revenue. Thus, this rulemaking is not expected to have a significant economic impact on the participating small servicers. After the first year of implementation, there will be a monetary benefit realized by servicers due to the reduction in burden this rulemaking will accomplish. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

Although this final rule contains provisions constituting collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collections of information for 38 CFR

36.4317, 36.4319, and 36.4320 are currently approved by Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0021.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on March 28, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

1. The authority citation for part 36, subpart B continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

2. Amend § 36.4301 by:

- a. Removing the definition of “Compromise sale”;
- b. Revising the third sentence of “Liquidation sale”;
- c. Revising the definition of “Repayment plan”;
- d. Adding, in alphabetical order, the definition for “Short sale”; and
- e. Revising the definition of “Special forbearance”.

The revisions and addition read as follows:

§ 36.4301 Definitions.

* * * * *

Liquidation sale. * * * This term also includes a short sale.

* * * * *

Repayment plan. This is a documented agreement by and between the borrower and the holder to reinstate a loan that is 61 or more calendar days delinquent, by requiring the borrower to pay each month over a fixed period (minimum of three months duration) the normal monthly payments plus an agreed upon portion of the delinquency each month.

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Short sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

Special forbearance. This is a documented agreement by and between the holder and the borrower where the holder agrees to suspend all payments or accept reduced payments for one or more months, on a loan 61 or more calendar days delinquent, and the borrower agrees to pay the total delinquency at the end of the specified period or enter into a repayment plan.

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§ 36.4315 [Amended]

- 3. Amend § 36.4315(a) by removing “written” and adding in its place “a documented”.

§ 36.4316 [Amended]

4. Amend § 36.4316 by:

- a. Removing “documented” in paragraphs (b)(2), (3), and (4); and
- b. Removing “written” in paragraph (b)(6).

5. Amend § 36.4317 by:

- a. Removing “agreement” in paragraph (c)(18);
- b. Removing “Compromise sale” and “compromise sale” and adding “Short sale” and “short sale”, respectively, in paragraph (c)(21); and
- c. Revising paragraphs (c)(30) and (31).

The revisions read as follows:

§ 36.4317 Servicer reporting requirements.

* * * * *

(c) * * *

(30) Basic claim information—when the servicer files a claim under guaranty. The servicer shall report this event within 365 calendar days of loan termination for non-VA purchase claims, and within 60 calendar days of the approval date for VA purchase claims.

(31) VA purchase settlement—when VA purchases a loan and the servicer reports the tax and insurance information. The servicer shall report this event within 60 calendar days of the VA purchase approval date.

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§ 36.4319 [Amended]

6. Amend § 36.4319 by:

- a. Removing “special forbearance agreements” and “compromise sales” and adding in their place “special forbearances” and “short sales”, respectively, in paragraph (a);
- b. Removing “Compromise Sale” and adding in its place “Short Sale” in the table in paragraph (b);
- c. Removing “compromise sale” and adding in its place “short sale” in paragraph (c)(4).

§ 36.4320 [Amended]

7. Amend § 36.4320 by:

a. Removing “Refunding” and adding in its place “VA purchase” in the heading;

b. Removing “refund” and adding in its place “purchase” in paragraph (c); and

c. Removing “2900-0362” and adding in its place “2900-0021” in the parenthesis at the end of the section.

§ 36.4322 [Amended]

8. Amend §§ 36.4322(e)(1), (1)(ii), (2), and (f)(1)(iii) by removing “compromise sale” each place it appears and adding “short sale” in its place.

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